

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

EMBASSY PARK APARTMENTS
MANAGEMENT OFFICE
Respondent

Case Nos.: I-00-30207
I-00-30218

FINAL ORDER

I. Introduction

On September 17, 2001, the Government served a Notice of Infraction (No. 00-30207) on Respondent Embassy Park Apartments Management Office, alleging that it violated D.C. Official Code § 47-2824 by operating a swimming pool without a license. The Notice of Infraction alleged that the violation occurred on June 19, 2001 at 4377 Embassy Park Drive, N.W. and sought a fine of \$500.

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02 (e), 2-1802.05). Accordingly, on October 18, 2001, this administrative court issued an order finding Respondent in default, assessing the statutory penalty of \$500 authorized by D.C. Official Code § 2-1801.04 (a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government then served a second Notice of Infraction (No. 00-30218) on October 31, 2001. Respondent also did not answer that Notice within twenty days of service. Accordingly, on December 14, 2001, a Final Notice of Default was issued, finding Respondent in default on the second Notice of Infraction and assessing total penalties of \$1,000 pursuant to D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1801.04(a)(2)(B). The Final Notice of Default also set January 15, 2002 as the date for an *ex parte* proof hearing, and afforded Respondent an opportunity to appear at that hearing to contest liability, fines, penalties or fees. Copies of both the first and second Notices of Infraction were attached to the Final Notice of Default.

The Government, represented by Maria Hille, the inspector who issued the Notice of Infraction, appeared for the hearing. There was no appearance for Respondent. Based upon the testimony of the Government's witness, my assessment of her credibility and the documents introduced into evidence, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

On June 19, 2001, Ms. Hille conducted an inspection of a swimming pool at an apartment complex located at 4377 Embassy Park Drive, N.W. She spoke with the pool manager and the lifeguard on duty and determined that a company named Winkler was managing the pool. There is no evidence showing who owned the pool or the apartment complex. Neither the on-site manager nor the lifeguard was able to produce a license authorizing operation of the pool. Ms. Hille subsequently sent a fax to a Winkler office in Maryland asking for a copy of the license, Petitioner's Exhibit ("PX") 103, but she did not receive a reply.

Both the first and the second Notices of Infraction were sent by certified mail addressed to "Embassy Park Apartments Management Office" at 4377 Embassy Park Road, N.W. Both

notices were returned by the Postal Service marked “unclaimed.” Copies of the orders of October 18, 2001 and December 14, 2001 that were mailed to that same address also were returned to the Clerk’s office by the Postal Service.

III. Conclusions of Law

D.C. Official Code § 47-2824 provides:

- (a) Owners or managers of swimming pools, indoor or outdoor, shall pay a license fee of \$319 per annum.
- (b) Any license issued pursuant to this section shall be issued as a Class A Public Health: Public Accommodations endorsement to a master business license under the master business license system

Thus, under § 47-2824, either the owner or the manager of a swimming pool is responsible for paying the license fee and securing the appropriate license or endorsement. In this case, the evidence is insufficient to establish that the named Respondent – “Embassy Park Apartments Management Office” – is a liable party under § 47-2824. The manager of the pool is a company named Winkler, which is not a Respondent, and there is no evidence showing who owns the pool or the apartment complex where it is located. Even if “Embassy Park Apartments Management Office” were an entity with the capacity to be named as a party in this matter (an issue I do not decide), the Government has not shown that it is the owner of the pool. Because only the owner or manager of a pool can be liable for violating § 47-2824, the Notices of Infraction must be dismissed. Such dismissal shall be without prejudice to the filing of a Notice of Infraction naming either the owner or the manager of the pool as a Respondent.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____
day of _____, 2002:

ORDERED, that Respondent Embassy Park Apartments Management Office is **NOT**
LIABLE for violating D.C. Official Code § 47-2824, and the Notices of Infraction are
DISMISSED; and it is further

ORDERED, that dismissal of the Notices of Infraction is without prejudice to the filing
of a new Notice of Infraction naming some party other than “Embassy Park Apartments
Management Office” as a Respondent if the Government believes that such other party is either
the owner or the manager of the pool at issue.

/s/ **1/29/02**

John P. Dean
Administrative Judge